IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 9, 2005

STATE OF TENNESSEE v. TIMOTHY JOHNSON

Appeal from the Criminal Court for Davidson County
No. 92-B-781 Cheryl Blackburn, Judge

No. M2005-00168-CCA-R3-HC - Filed September 7, 2005

The petitioner, Timothy L. Johnson, appeals from the Davidson County Criminal Court's dismissal of his petition for *habeas corpus* relief. Because we agree with the criminal court's action, we affirm.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which DAVID G. HAYES and JERRY L. SMITH, JJ., joined.

Timothy Johnson, Appellant, *Pro Se*.

Paul G. Summers, Attorney General & Reporter; Blind Akrawi, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

In his 2004 petition for a writ of *habeas corpus*, the petitioner challenged his 1993 Davidson County sentence of 35 year for second degree murder, claiming that the sentence is illegal because it is "outside the sentence range of which the Petitioner stands convicted." In the petitioner's memorandum of law attached to the petition, the petitioner claimed that his guilty plea to the conviction offense "could not have been given knowingly, voluntarily, intelligently because the judgment was void from its inception." The state moved to dismiss the petition because it failed to state a claim for *habeas corpus* relief. The criminal court agreed and dismissed the petition. The petitioner filed a timely appeal. We, in turn, agree with the criminal court and affirm that court's order.

The legal issues raised in a *habeas corpus* proceeding are questions of law, and our review of questions of law is *de novo*. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). *Habeas corpus* relief is available only when the aggrieved party's conviction is void or the sentence has

expired. *See Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). The petitioner in the present case makes no allegation that his sentence has expired; he claims that his sentence, and hence his conviction judgment, is void.

A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Id.*; *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn.1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App.1994). Because in this case the trial court apparently had jurisdiction over the *actus reus*, the subject matter, and the person of the petitioner, the petitioner's jurisdictional issue is limited to the claim that the court was without authority to enter the judgment. *See Anglin*, 575 S.W.2d at 287 ("'Jurisdiction' in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned."); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

The invalidity of the sentence itself, as well as the broader invalidity of the conviction, results in a void judgment and is a sufficient basis for *habeas corpus* relief. *See Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (stating that a void sentence, as well as a void conviction, may result in a void judgment and be the subject of a habeas corpus proceeding). For an illegal sentence claim to support a claim for *habeas corpus relief*, however, the illegality of the sentence must be egregious *to the point* of voidness. *Cox v. State*, 53 S.W.3d 287, 292 (Tenn. Crim. App. 2001). Thus, mere clerical errors in the terms of a sentence may not give rise to a void judgment. *See, e.g., Ronald W. Rice v. David Mills*, No. E2003-00328-CCA-R3-PC, slip op. at 3-4 (Tenn. Crim. App., Knoxville, Aug. 19, 2003) (stating that the trial court erred in designating on the judgment form that the petitioner was sentenced under the 1982 sentencing law, when the 1989 law applied to Rice's case; the 1989 law was actually applied in Rice's case, and the resulting sentence was "not void and the petitioner [was] not entitled to habeas corpus relief""), *perm. app. denied* (Tenn.2004).

Relative to the egregiousness of the sentencing defect, our supreme court in *McLaney v. Bell*, 59 S.W.3d 90 (Tenn. 2001), said that an "illegal" sentence equates to a "jurisdictional defect." *Id.* at 92. However, in *McConnell v. State*, 12 S.W.3d 795, 798 (Tenn. 2000), the supreme court said broadly in addressing plea-bargain negotiations that issues of "offender classification and release eligibility" are "non-jurisdictional." *See Hicks v. State*, 945 S.W.2d 706 (Tenn. 1997) (holding that a plea-bargained Range II sentence is valid when coupled with Range I release eligibility); *Bland v. Dukes*, 97 S.W.3d 133, 135 (Tenn.Crim.App.2002) (upholding aggravated robbery sentence, despite sentence length falling in range above petitioner's range classification), *perm. app. denied* (Tenn.2002); *State v. Terry*, 755 S.W.2d 854, 855 (Tenn. Crim. App.1988) (applying 1982 sentencing law and upholding plea-bargained kidnapping sentence, the terms of which fit within the broad range of punishment for the offense class). Nevertheless, "[t]he 1989 Act establishes the outer limits within which [a sentence may be fashioned], and the courts are bound to respect those limits." *McConnell*, 12 S.W.3d at 799; *see, e.g., William Boyd v. State*, No. E1999-02179-CCA-R3-PC, slip op. at 5-6 (Tenn. Crim. App., Knoxville, Nov. 6, 2000) (holding that 100 percent release eligibility is beyond the outer limits of release eligibility percentage for even

career offenders, and sentence is subject to habeas corpus attack); *see also Stephenson*, 28 S.W.3d at 911-12 (holding first-degree murder sentence expressed as life sentence without possibility of parole subject to *habeas corpus* relief when, at the time of the offense, a life sentence without the possibility of parole was not possible).

The petitioner claims that he qualified for sentencing as a Range I offender, that a Range I classification was applied, but that, notwithstanding, his guilty-pleaded sentence of 35 years exceed Range I. As pointed out above, however, our supreme court has said that issues of offender range and release eligibility are non-jurisdictional and, therefore, subject to plea bargaining. *See McConnell*, 12 S.w.3d at 798. The courts have enforced plea-bargained, hybrid sentences when the length of the sentence did not exceed the maximum sentence assigned to the particular class of offense, Class A in the present case. *See, e.g., Robert McChristian*, No. W2003-03034-CCA-R3-HC, slip op. at (Tenn. Crim. App., Jackson, Sept. 15, 2004). The petitioner's 35-year sentence falls within the broad scope of sentencing for Class A offenders. *See* Tenn. Code Ann. §§ 40-35-111(b)(1), -112(c)(1) (2003) (establishing maximum sentence of 60 years for Class A offenses). Thus, the petitioner's sentence was not void and is not subject to collateral attack via a petition for *habeas corpus* relief.

We aware that, although the petition did not allege that the petitioner's guilty plea was invalid, his memorandum of law asserts that the plea was not knowing and voluntary because the sentence was illegal and void. We have determined above, however, that the plea was not void. Moreover, the writ of *habeas corpus* is not available to challenge a guilty plea as being involuntary or unknowing. *Archer*, 851 S.W.2d at 163. An involuntary or unknowing guilty plea merely renders the judgment voidable. *Anthony K. Goods v. Tony Parker*, No. W2003-02914-CCA-R3-HC, slip op. at (Tenn. Crim. App., Jackson, Oct. 13, 2004). Thus, even if the petition could be construed as raising an issue of the validity of the guilty plea and even if we had not already adjudicated that the sentence is not void, the claim of invalidity of the plea would not be cognizable in this proceeding.

For these reasons, the criminal court's order is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE